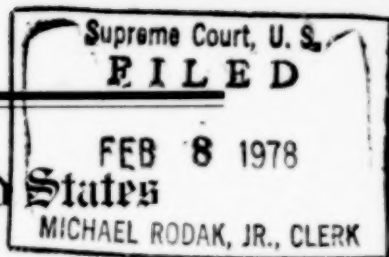


IN THE
Supreme Court of the United States
OCTOBER TERM, 1977



No. 77-753

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
v. *Petitioner*

JOHN DANIEL

No. 77-754

LOCAL 705, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
AND LOUIS F. PEICK,
v. *Petitioners*

JOHN DANIEL

On Petitions for a Writ of Certiorari to the
United States Court of Appeals for
the Seventh Circuit

PETITIONERS' JOINT REPLY MEMORANDUM

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Respondent asserts that because the decision below is interlocutory it is not "ripe for review" (Br. in Opp. 47). But while that circumstance may be a factor in determining whether certiorari should be granted, it is also clear that this Court frequently reviews judgments which do not terminate the action. It suffices to recall recent

securities laws decisions previously cited herein in which a Court of Appeals had sustained the complaint and remanded the action to the District Court for trial when this Court granted the defendant's Petition for Certiorari: *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723; *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837; *Ernst & Ernst v. Hochfelder*, 425 U.S. 185; *Santa Fe Industries, Inc. v. Green*, 430 U.S. 462.

Respondent also notes that if the securities counts are dismissed the case must be "remanded to the district court for trial on the remaining federal causes of action not in issue on this appeal." (Br. in Opp. 47, n. 44). The presence of these other claims (described at Local 705 Pet. 6) shows that if the denial of benefits to plaintiff was indeed arbitrary and capricious he will be able to obtain relief without adopting the Court of Appeals' novel and far-reaching interpretation of the securities laws,¹ but it in no way detracts from the desirability of prompt review of the Court of Appeals' decision. It cannot be denied that this Court's resolution of the issues presented by the Petitions will be "fundamental to the further conduct of this case", see *United States v. General Motors Corp.*, 323 U.S. 373, 377. Reversal of the securities counts will obviate a lengthy and complex trial on the elements which any plaintiff must prove on this theory—e.g. scienter, (see App. 42, n. 47), and "justifiable reliance on a material misrepresentation or omission causing him injury" (*id.* 50). And it would sharply reduce the size of the plaintiff class from all present and past members of Local 705 who have contributed to or on whose behalf a

¹ This point is reinforced by the Gray Panthers' Brief in Opposition. For the true lesson of the cases under § 302(c)(5) which they discuss is not that the decision below "flesh[es] out th[e] obligation" embodied in the "exclusive benefit" standard (*Id.* p. 11) but that it is not necessary to apply the sledgehammer of the securities laws where Congress has provided a scalpel through legislation specifically addressed to collectively-bargained employee trust funds.

contribution has been made to the Local 705 fund (see IBT Pet. 17, n. 21) to at most those individuals who were actually denied benefits because of what are alleged to be arbitrary and capricious actuarial assumptions and eligibility requirements.²

Faced with briefs by the United States and an extraordinary range of organizations which stress the public importance of prompt review, respondent resorts to the assertion that "the decision below is restricted to the particular facts of a Teamster Union multi-employer pension fund." (Br. in Opp. 34).³ We submit that review by this Court would be imperative if, as respondent contends (*id.* 34-35), the Court of Appeals' decision were susceptible to such a reading, for it would then "verg[e] too closely towards the wholly unacceptable proposition that the rules of the game vary with the players." Cf. *Communist Party of the U.S.A. v. C.I.R.*, 332 F.2d 325, 329 (C.A.D.C.). But we submit that certiorari should be

² Such individuals would not be adversely affected by eliminating as potential claimants the vast majority of class members who were denied benefits because they failed to satisfy plainly reasonable eligibility requirements; indeed they would benefit by avoiding any conflict between themselves and present participants on the one hand and those for whom any recovery would be a windfall on the other, over what the court below recognized are limited assets. (Pet. App. 49; cf. AFL-CIO Br. 3-6). The enlargement of potential liability to all participants who were not told of the actuarial probability that any individual will ultimately qualify is one reason why the decision below is so potentially devastating to all pension plans, for none have made such disclosures. (See e.g. ERIC Br. 13, NCCMP Br. 4-5; IBT Pet. 12.) The IBT Petition inadvertently stated the combined assets of pension funds as "over \$150 million"; the correct figure, of course, is over \$150 billion. See App. 24.

³ In light of respondent's irresponsible charge against "Teamster pension funds" as a class, we feel obliged to point that the Court of Appeals stated that "A large portion of Local 705's Pension Fund is maintained by the trust departments of major Chicago banks." (App. 29, n.35); the remainder is, as the record below shows, held in short-term or government securities and "real estate limited to not more than 10% of the portfolio" (C.A. App. 185a-15).

granted instead on the basis of the fairer, and, if anything, conservative assessment made by the United States: "The decision of the court of appeals directly affects the operation and administration of many privately sponsored pension benefit plans, which cover millions of the nation's active and retired workers." (Mem. for U.S. pp. 1-2).

Respectfully submitted,

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